

ARNE W. MURTO

IBLA 84-152

Decided July 1, 1985

Appeal from decision of the Anchorage District Office, Bureau of Land Management, declaring mining claims abandoned and void. AA-28080 through AA-28092 and AA-29202 through AA-29207

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intent to Hold Mining Claim

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1982), requires the owner of an unpatented mining claim located prior to Oct. 21, 1976, to file evidence of annual assessment work or notice of intention to hold with the Bureau of Land Management on or before Oct. 22, 1979, and on or before Dec. 30 of each year thereafter. This requirement is mandatory and the failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and render the claim void.

APPEARANCES: Stephen J. Crispen, Esq., Kenai, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Arne W. Murto appeals from an October 12, 1983, decision of the Anchorage District Office, Bureau of Land Management (BLM), declaring certain lode mining claims abandoned and void. 1/ BLM found no location notice was

1/ The following are the mining claims listed in BLM's decision:

<u>Claim Name</u>	
AA-28080	Finnbear Addition B Claim #10
AA-28081	Finnbear Addition B Claim #11
AA-28082	Finnbear Addition B Claim #12
AA-28083	Finnbear Addition B Claim #13
AA-28084	Finnbear Addition B Claim #14
AA-28085	Finnbear Addition B Claim #15
AA-28086	Finnbear Addition B Claim #16
AA-28087	Finnbear Addition B Claim #17

BLM Serial Number

filed for the Finnbear Mining and Exploration #3; thus, that claim was not properly recorded in accordance with section 314(b) of the Federal Land Policy and Management Act of 1976, (FLPMA) 43 U.S.C. § 1744(b) (1982). BLM further found for the remainder of the claims that no assessment work affidavit or notice of intent to hold the claims had been filed on or before October 22, 1979, as required by section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1982). Failure to provide the instruments required by section 314(a) and (b) is deemed conclusively to constitute an abandonment of the claim. 43 U.S.C. § 1744(c) (1982). 2/

[1] On appeal appellant does not contest the failure to record the Finnbear Mining and Exploration #3. Therefore, BLM properly declared that claim abandoned and void. Appellant does assert, however, that prior to October 22, 1979, he did file two notices of intention to hold and develop the claims. Appellant provides copies of two letters to BLM, one dated August 20, 1979, and the other dated September 26, 1979, each of which indicate appellant's desire to hold and work his claims.

While those letters do, in fact, register an intent to hold and work the claims, appellant has provided no evidence that such letters were received by BLM. 3/ The official case records do not contain copies of either of those letters; however, there is a copy of a proof of labor filed with BLM on November 5, 1979, for the claims.

There is a presumption of regularity which supports the official acts of public officers in the proper discharge of their duties. See, e.g., Legille v. Dann, 544 F.2d 1 (D.C. Cir. 1976); Phillips Petroleum Co., 38 IBLA 344 (1978). On the other hand, we have recognized the existence of another

fn. 1 (continued)

AA-28088	Finnbear Addition B Claim #18
AA-28089	Finnbear Addition B Claim #19
AA-28090	Happy Point Claim #1
AA-28091	Happy Point Claim #2
AA-28092	Finnbear Mining & Exploration #3
AA-29202 (Duplicate Case)	Finnbear Addition B Claim #14
AA-29203 (Duplicate Case)	Finnbear Addition B Claim #15
AA-29204 (Duplicate Case)	Finnbear Addition B Claim #16
AA-29205 (Duplicate Case)	Finnbear Addition B Claim #17
AA-29206 (Duplicate Case)	Finnbear Addition B Claim #18
AA-29207 (Duplicate Case)	Finnbear Addition B Claim #19

BLM stated in the decision that from information it received from claimant it appeared case files "AA-28084, AA-28085, AA-28086, AA-28087, AA-28088 and AA-28089 are duplicate files of AA-29202, AA-29203, AA-29204, AA-29205, AA-29206 and AA-29207."

2/ BLM further noted that the land on which the claims were located in 1976, T. 22 N., R. 17 W., Seward Meridian, Alaska, was segregated from location and entry under the general mining laws by the filing of state selection application AA-6896 on Jan. 21, 1972.

3/ Even if such letters had been received, they clearly did not satisfy the requirements of 43 CFR 3833.2-3 (1979), governing the form of the notice of intent to hold.

presumption that mail properly addressed, stamped, and deposited in an appropriate receptacle is duly delivered. See generally Donald E. Jordan, 35 IBLA 290 (1978). When these two presumptions have come into conflict, we have traditionally accorded greater weight to the former. See David F. Owen, 31 IBLA 24 (1977). This choice has been predicated on considerations of public policy and supported by burden of proof analysis. Bernard S. Storper, 60 IBLA 67, 70 (1981), aff'd, Storper v. Watt, No. 82-0449 (D.D.C. Jan. 20, 1983).

Even if appellant could establish that the letters were mailed to BLM, he could not prevail because depositing a document in the mail does not constitute delivery, and, thus, does not constitute filing. 43 CFR 1821.2-2(f); see Rachel G. Conover, 75 IBLA 323, 324 (1983).

Therefore, when an appellant asserts that a document was sent to BLM, and BLM has no record of receiving it, the presumption of regularity militates against a finding that it was, in fact, received by BLM and subsequently lost through mishandling without any record or recollection of it by BLM personnel. Carmelita M. Holland, 87 IBLA 175 (1985); Glenn W. Gallagher, 66 IBLA 49, 51 (1982). Appellant has not submitted evidence which would overcome this presumption.

In a recent decision, United States v. Locke, 105 S. Ct. 1785 (1985), the Supreme Court upheld the constitutionality of section 314 of FLPMA, 43 U.S.C. § 1744 (1982). In that decision the Court stated at 1795-96:

Congress intended in § 314(c) to extinguish those claims for which timely filings were not made. Specific evidence of intent to abandon is simply made irrelevant by § 314(c); the failure to file on time, in and of itself, causes a claim to be lost. See Western Mining Council v. Watt, 643 F.2d 619, 628 (CA9 1981).

Appellant's failure to file an affidavit of assessment work or notice of intent to hold the claims on or before October 22, 1979, resulted in the conclusive abandonment of those claims. See 43 U.S.C. § 1744(c) (1982); Dan Walker, 74 IBLA 153 (1983).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Gail M. Frazier
Administrative Judge

